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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,196	12/22/2000	Donald E. Weder	8403.303	4068

30589 7590 08/28/2002

DUNLAP, CODDING & ROGERS P.C.
PO BOX 16370
OKLAHOMA CITY, OK 73114

EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/747,196

Applicant(s)

WEDER, DONALD E.

Examiner

Jeffrey L. Gellner

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3800

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Terminal Disclaimer

The terminal disclaimer submitted as paper no. 10 was not entered because:

The serial number of the patent (US 6,182,392 B1) which forms the basis for the double patenting rejection is incorrect. That is, the terminal disclaimer is directed to US 5,697,199.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 32 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,182,392 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Both Claim 32(application) and 1 (6,182,392 B1) are drawn to a floral grouping display assembly comprising a display surface; a floral grouping; and a sheet of material wrapped about at least a portion of the floral grouping, the sheet material being releasably connected to the display surface.

Claim 33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 of U.S. Patent No. 6,182,392 B1 in view of Weder (US 5,603,406). Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Claim 33(application) and Claim 1(6,182,393 B1) are drawn to a floral grouping display assembly comprising a display surface; a floral grouping; and a sheet of material wrapped about at least a portion of the floral grouping, the sheet material being releasably connected to the display surface. Not disclosed is the sheet of material being transparent. Weder ('406) however discloses a transparent sheet of material for a floral grouping (Claim 3). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the assembly of 6,182,392 B1 by using a transparent sheet of material as disclosed by Weder ('406) to entice customer purchases.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niemi (US 4,828,209) in view of Adams (US 4,170,618).

As to Claim 32, Niemi discloses a floral grouping display assembly (Figs. 1-13) comprising a wall (seen in Fig. 8); and, a floral grouping having a bloom end and a stem end (seen in Fig. 8), the floral grouping releasably connected to the wall (defined as releasably connected when placed in vase 10 of Fig. 8). Not disclosed is the floral grouping wrapped about a portion of the stem end of the floral grouping and the length of the wrapped floral grouping visibly displayed on the wall. Adams, however, discloses a wrap for a floral grouping (Figs. 1-3). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the display assembly of Niemi by placing the floral display in the wrap of Adams before placement in the vase of Niemi so as to stop leaking of water when the floral display is of live plants; further, the length of the wrapped floral grouping would be visibly displayed on the wall when the vase and wrap are made of transparent plastic. Plastic vases and wraps of transparent material are old and notoriously well known in the container arts.

As to Claim 33, Niemi discloses a floral grouping display assembly (Figs. 1-13) comprising a wall (seen in Fig. 8); and, a floral grouping having a bloom end and a stem end (seen in Fig. 8), the floral grouping releasably connected to the wall (defined as releasably connected when placed in vase 10 of Fig. 8). Not disclosed is the floral grouping disposed in a transparent container made of a transparent sheet material and the length of the floral grouping visibly displayed on the wall. Adams, however, discloses a container for a floral grouping (Figs. 1-3). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the display assembly of Niemi by placing the floral display in the container of Adams before placement in the vase of Niemi so as to stop leaking of water when the floral display is of live plants; further, the length of the wrapped floral grouping would be visibly displayed on the

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wall when the vase and wrap are made of transparent plastic. Plastic vases and wraps of transparent material are old and notoriously well known in the container arts.

Response to Arguments

Applicant's arguments with respect to claims 32 and 33 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Weder ('217), Nichols, Jr, Daly et al., JP8-289832, and JP10-262793 disclosed in the published art various display assemblies for floral groupings for walls. Mayer, Kingsford, Kranich, Hine et al, and Surman disclose in the prior art various walls with containers.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

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Jeffrey L. Gellner



PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600